

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

1 **GEORGE MARTINEZ,**

2  
3 v.

CIVIL NO. 98-1556 (DRD)

4 **HOSPITAL SAN PABLO, INC., et al.,**

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7 **ORDER**

8 1. Liability of surgeon, Dr. Manuel J. Martinez Colón

9 The minutes of an Initial Scheduling Conference held on March 23, 1999, reads in  
10 pertinent part as follows:

11 "The Court expressed serious doubts as to the liability of the surgeon, Dr. Manuel J.  
12 Martinez Colón, in this case wherein liability is couched on the lack of providing the  
13 correct blood in post-operation procedures to Plaintiff's mother causing her death.  
14 The Plaintiff concedes that "[t]he surgical procedure was successfully performed on  
15 May 21, 1997. (ISC Memorandum, Docket No. 13). However, Plaintiff alleges  
16 forty-one (41) units of blood platelets were wrongfully administered to Plaintiff's  
17 mother. Id. The Court harbors serious doubts as to the surgeon's obligations to  
18 perform or supervise the examination of the blood type of the deceased and/or to  
19 provide her with the blood transfusions. Plaintiff's counsel advised the Court that  
20 liability stems from Puerto Rica Supreme Court jurisprudence mandating doctors to  
21 follow-up on medical orders. Notwithstanding, to the Court it seems that pursuant  
22 to Plaintiff's version of the facts of the case the surgeon ordered the request and a  
23 third-party Hospital subcontractor complied. The third party allegedly did not  
24 adequately or correctly perform the required tests, which led to either incorrect blood  
25 being administered, or the correct blood was administered too late. The liability of  
26 the surgeon under these circumstances seems tenuous at best. Plaintiff is to advise  
the Court on this matter with **twenty (20) days, that is by April 20, 1999.**"

(Docket No. 17) (emphasis in original). Thereafter, on May 18, 1999, the Court issued an Order  
with text as follows:

"The motion at Docket No. 19, however, as "the liability of the surgeon, Dr. Manuel  
J. Martínez Colón," is a different matter entirely and is **DENIED**. At the Initial  
Scheduling Conference held on March 23, 1999, the Court Ordered, "Plaintiff is to



1 advise the Court on this matter with (sic) **twenty (20) days, that is by April 20,**  
2 **1999.**" (Docket No. 17) (emphasis in original). The motion for extension of time at  
3 Docket No. 19 was not filed until May 12, 1999, nearly a full fifty (50) days after the  
4 Court's order given at the Initial Scheduling Conference. The Court takes its orders  
very seriously. Therefore, the Plaintiff, by the Court's grace, shall have until **May**  
**25, 1999**, to comply. Noncompliance with this Order shall result in sanctions, which  
could include dismissal for want of prosecution as to the surgeon, Dr. Manuel J.  
Martínez Colón."

5 (Docket No. 26). On May 21, 1999, the Plaintiff, George Martínez ("Plaintiff"), responded by  
6 filing a Memorandum in Relation to Liability of Surgeon Dr. Manuel J. Martínez Colón ("Dr.  
7 Martínez") (Docket No. 27), wherein the Plaintiff cites but one case to support the proposition  
8 that Dr. Martínez is liable to Plaintiff. See Nuñez v. Cintrón Ortiz, 115 D.P.R. 598, 615 (1984).  
9 The Court has carefully reviewed Plaintiff's proffer. Succinctly, the Court is convinced that Dr.  
10 Martínez cannot be held liable for the improper blood platelets transfusions administered to  
11 decedent, Olga Martínez Vicenty, on May 21, 1997, by a blood subcontractor retained by the  
12 Hospital, because the Plaintiff cannot "prove by preponderance of evidence, that the defendant's  
13 negligent conduct was the factor that most probably caused the damage." Nuñez v. Cintrón  
14 Ortiz, 115 P.R. Offic. Trans. 786, 810. However, after the initial procedure Dr. Martínez may be  
15 held potentially liable if factual and expert testimony proves by a preponderance that he should  
16 have recognized the symptoms of the mismatched blood administered prior to May 29, 1997, the  
17 date when the blood tests that detected the problem were conducted. See id. The Court at this  
18 time is only ruling stating that the allegations in the Complaint are sufficiently plead.  
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23 2. Amended Complaint to include additional defendants.

24 Additionally, the minutes of the Initial Scheduling Conference held on March 23, 1999,  
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contains the following:

1 "The Court GRANTS Plaintiff a reasonable time to amend the Complaint not to  
2 exceed **forty-five (45) days, that is by May 17, 1999**. Further, the Plaintiff has  
3 **thirty (30) days, that is by June 18, 1999**, to serve summons on any additional  
4 Defendants to the instant action. Consequently, the Plaintiff is Ordered to advise the  
Court when the last of these additional Defendants have made an appearance before  
the Court, for the purpose of re-scheduling an Initial Scheduling Conference."

5 (Docket No. 17). In compliance with the Court's instruction, the Plaintiff filed an Amended  
6 Complaint on May 12, 1999. (Docket No. 21). Thereafter, Co-defendant, Dr. Jennifer  
7 Oppenheimer Catalá, filed a Informative Motion In Request For Order (Docket No. 29), alleging  
8 that the Plaintiff had not complied with the Court's order as contained in the above March 23,  
9 1999 by not filing an Amended Complaint to include intervening physicians. Because Plaintiff  
10 did file an Amended Complaint, and because Co-defendant's motion does not specify which  
11 intervening physicians were not included, Co-defendant's, Dr. Jennifer Oppenheimer Catalá,  
12 motion (Docket No. 29), is **DENIED**.  
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16 3. Co-defendant's, Dr. Jennifer Oppenheimer Catalá, Motion To Compel Answers To  
17 Interrogatories (Docket No. 30), has been rendered **MOOT**.  
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19 4. Co-defendant's, Seguros Triple S, Inc. Motion Requesting Imposition of Non-Resident Bond.  
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21 Pending before the Court is Co-defendant's, Seguros Triple S, Inc. ("SSS"), Motion  
22 Requesting Imposition of Non-Resident Bond (Docket No. 34), requesting the imposition of at  
23 least one thousand dollars (\$1000.00) from Plaintiff. Plaintiff did not oppose. As SSS notes, if a  
24 defendant seeks a non-resident bond over \$250.00, then Local Rule 304 requires that the Court  
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consider three factors. These factors are: “(1) the plaintiff’s probability of success on the merits, and the background and purpose of the suit; (2) the reasonable extent of the security to be posted, if any, viewed from the defendant’s perspective; and (3) the reasonable extent of the security to be posted, if any, viewed from the nondomiciliary plaintiff’s perspective.” Murphy v. Ginorio, 989 F.2d 566, 569 (1<sup>st</sup> Cir. 1993). Thus, SSS must illustrate to the Court the aforementioned factors, and, if deemed necessary, the Court shall then hold a hearing to decide whether a non-resident bond of greater value is necessary and just. See Murphy, 989 F.2d at 569; Aggarwal v. Ponce Sch. of Med., 745 F.2d 723, 728 (1<sup>st</sup> Cir. 1984). Although SSS requests that the Court impose a non-resident bond of at \$1000.00 the Court shall not exercise its discretion to go beyond \$250.00. “While it is neither unjust nor unreasonable to expect a suitor ‘to put his money where his mouth is,’ toll-booths cannot be placed across the courthouse doors in a haphazard fashion.” Aggarwal, 745 F.2d at 728. **A \$250.00 non-resident bond from Plaintiff shall be initially imposed in this case.**

5. Plaintiff’s Informative Motion And Motion For Enlargement (Docket No. 36) is **GRANTED/MOOT**. See (Docket No. 40).

6. Motion For Withdrawal Of Legal Representation.

Attorneys, Jose A. Rivera Cordero and Pedro Lugo Frank, for Co-defendant, Seguros Triple S, Inc. (“SSS”), requested withdrawal of legal representation (Docket No. 38), because SSS requested that its legal representation would be fulfilled by Jaime E. Morales. The motion is **GRANTED**. (Docket No. 38). Therefore, attorneys, Jose A. Rivera Cordero and Pedro Lugo

Frank, are relieved from representing SSS and are substituted by Jaime E. Morales.

7. Informative Motion (Docket No. 41) by Co-defendant, Dr. Jennifer Oppenheimer Catalá, request for a Scheduling Conference is hereby **GRANTED**. The Scheduling Conference will be held on April 6, 2000 at 4:30 p.m.

IT IS SO ORDERED.

**Date: February 29, 2000**

P \PEACHORD ERS\98-1556B MTN



**DANIEL R. DOMINGUEZ**  
**U.S. District Judge**